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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                    | CONFIRMATION NO. |
|--|-------------|----------------------|--|------------------|
| 09/659,306   | 09/12/2000  | Jeff Lindsay         | 659/718                                | 6081             |
| 757  | 7590        | 10/05/2005           |  |                  |
| BRINKS HOFER GILSON & LIONE<br>P.O. BOX 10395<br>CHICAGO, IL 60610 |             |                      | EXAMINER<br>MARCELO, EMMANUEL MONSAYAC |                  |
|  |             |                      | ART UNIT<br>3654                       | PAPER NUMBER     |
| DATE MAILED: 10/05/2005  |             |                      |  |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

*ku*

## Office Action Summary

Application No.

09/659,306

Applicant(s)

LINDSAY ET AL.

Examiner

Emmanuel M Marcelo

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26, 28 and 30 is/are rejected.
- 7) ☒ Claim(s) 27 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

Figures 66 and 67 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 16, line 5, it is unclear as to what is meant by the term "associated". How is the wiper blade "associated" with the gap? Relative to lines 6-7, it is unclear as to whether all the wipes are in this position while in use, i.e. all the wipes having their first portion inside the dispenser and their second portion outside the dispenser at one time.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 6, 8-10, 12-18, 20-22, 24-26, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent no. 6,158,614 to Haines et al.

With respect to claims 1, 3, 8, 10, 13-16, 18, 21, 24-26, 28 and 30, Haines et al disclose a dispenser 10; a wiper blade (see Fig. 3; element 26 or the members between the spaces 36)); wipers 45, the wipers comprising a contained agent (the agent is contained within the dispenser); and a gap (openings 35, 36) in the dispenser; wherein the wipers are capable of being positioned through the gap, the wiper blade exerting pressure on the wipers sufficient to moisten the wipers. The agent is contained in an emulsion (in the dispenser). A relative force is exerted by the wiper blade thereby causing the wipers to moisten after contacting the wiper blade.

With respect to claims 2, 9 and 17, the term “wet” and “dry” feel is subjective. Therefore, what one might feel as “wet” may feel “dry” to another. Also, the wipers, after being exposed to air may feel “dry”.

With respect to claims 5, 12 and 20, the agent is contained in a membrane (wet wipe).

With respect to claims 6 and 22, further comprising a mounting assembly (61).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines et al in view of US Patent no. 5,897,074 to Marino.

Haines et al is advanced above. Haines et al discloses a mounting assembly but does not disclose mounting the dispenser to a conventional dry bath tissue dispenser. Marino teaches that moist tissue is normally used in the bathroom and it is desired to provide means for storing the dispenser which cooperates with conventional bathroom fixtures such as a spindle upon which a roller of dry toilet paper wound about a hollow core is stored. Therefore, it would have been obvious to one of ordinary skill in the art to mount the dispenser of Haines et al to a conventional dry bath tissue dispenser so that both wet and dry tissues are in close proximity to each other for easy accessibility.

Claims 4, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines et al in view of US Patent no. 6,537,631 to Rivera et al.

Haines is advanced above. Haines does not teach the agent being contained in microcapsules. Rivera et al contain the agent within microcapsules to prevent drying out when not in use. It would have been obvious to one of ordinary skill in the art to contain the agent in microcapsules to that the wipes do not dry up during long periods of non-use.

***Allowable Subject Matter***

Claims 27 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel M Marcelo whose telephone number is 571-272-6949. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel M Marcelo

Primary Examiner

Art Unit 3654

emm

October 1, 2005